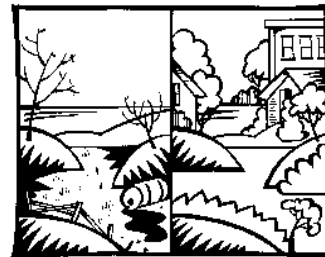


Fact Sheet A - Guidance for Development of Historic Fill Sites* and Licensed Landfills

April 2001

RR- XXX



***A historic fill site is a landfill that was established before 1970 and was not licensed by the DNR**

This publication is the first of four documents in an exemption application packet for redevelopment at historic fill sites and licensed landfills. Applicants are urged to consult all three documents before completing the *Exemption Application for Development on a Historic Fill Site and Licensed Landfill*, the fourth publication in the packet. The other two guidance documents are:

Fact Sheet B - Guidance for Investigation of Historic Fill Sites and Licensed Landfills for Redevelopment, and
Fact Sheet C - Considerations for Development at Historic Fill Sites and Licensed Landfills – Potential Problems

Many property owners are aware that the disposal of waste materials or solid waste was a matter of convenience in the past. Municipal solid waste, ashes, demolition debris, foundry sand, and other were placed in wetlands, marshes, ravines, other depressions, or were used to adjust the grade on properties. Any deposit of waste material meets the statutory definition of a landfill, but these landfills that were established before 1970 and were never licensed by DNR are called **historic fill sites**. DNR's administrative codes prohibit the placement of structures or other development on buried waste without an exemption to NR 506.085 because of legitimate and documented concerns about leachate, generation of methane, and past disposal practices.

Historic fill sites discovered during the preliminary development or construction activities will require some additional work by the owner/developer and are likely to require the services of an environmental professional. DNR has established a process that expedites the exemption process for those historic fill sites where the proposed development activities would have minimal concerns about safety.

This packet of publications explains the administrative process for development at a historic fill site beginning with the discovery of the fill materials. The purpose of these documents is to help applicants comply with Wisconsin's solid waste laws yet provide an adequate review to protect public health and welfare. It is DNR's intent to provide the level of review that corresponds to the expected impact of the fill materials and their impact on the proposed development.

The publications in this application packet will allow property owners, environmental professionals, developers, contractors, and members of the public to complete an application to the Department of Natural Resources for an exemption to the prohibition of structures and other improvements placed above waste materials as described in NR 506.085. By understanding what information needs to be collected and evaluated, an applicant can reduce delays in the development of the site to a minimum, especially if the site qualifies for an expedited exemption.

What type of information is in the application package?

This application packet for an exemption to the prohibitions to devel-



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<http://www.dnr.state.wi.us/org/aw/rr>



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development in NR 506.085 consists of four separate documents.

- *Fact Sheet A – Guidance for Development of Historic Fill Sites and Licensed Landfills* which describes the overall exemption process and the information that an application must contain.

There are two different levels of review of the exemption applications—the **expedited evaluation** and **case-by case evaluation**.

Historic fill sites that contain materials that are unlikely to impact the proposed development are eligible for an expedited review. Most historic fill sites and many of the older licensed landfills may be eligible for the expedited review. An applicant can determine whether the site is eligible for an expedited exemption by using information in this document and by contacting the appropriate DNR staff with any additional questions.

Certain characteristics of the site and its proposed development determine the type of review and the specific DNR program staff who conduct the review. The key characteristics that determine which administrative option is available are described in this document and summarized on the flow diagram in this document on pages 5 and 6.

- *Fact Sheet B – Guidance for Investigation of Historic Fill Sites and Licensed Landfills for Redevelopment* is written for the professional engineer or geologist who will conduct the waste and site characterization. The guidance goes through a series of steps to evaluate the relative risk to human health and environment.

It is up to the environmental professional to decide how much testing is appropriate in order to certify that the proposed development can be conducted safely at the historic fill site. The intent is to correlate the level

of investigation to the site's relative risk. Small sites with innocuous wastes will need the minimal information that will still ensure safe development.

- *Fact Sheet C – Considerations for Development at Historic Fill Sites and Licensed Landfills – Potential Problems* provides general information on the specific factors that must be considered when development takes place over fill materials. It also describes engineering controls, but clarifies that the responsibility for safe development of the site resides with the property owner, developer, and professionals who are responsible for the work at the site. The environmental professional should use this guidance in completing Part C of Section IX of the application.

- *Exemption Application - Development at a Historic Fill Site or Licensed Landfill - Form 4400-XXX* is submitted to DNR along with the necessary information that documents and supports the proposed development. The application covers many sites from very simple historic fill sites to large and complex landfills. The type of development on that site can vary from a simple structure to commercial or residential structures.

The amount of information that will be included with the application depends on the nature of the site as well as the proposed development. Applications for the simplest sites that qualify for an expedited review will need to complete Sections I through V and IX. **Sites that are more complex will need to fill out more of the sections.** Applications that will need a case-by-case evaluation must have Sections I through IX completed. Applications submitted to the Remediation and Redevelopment program must include a fee for technical review.

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Under what circumstances do I need to apply for an exemption?

In general, if you are proposing development on a property that contains solid waste, state statutes prohibit activities which interfere with the closed facility, causing a significant threat to public health, safety, or welfare in s. 289.46(2), Stats. More specifically, Solid Waste regulations in NR 506.085 prohibit development under the following three circumstances:

- Use of the waste disposal area for agricultural purposes.
- Establishment or construction of any buildings over the waste disposal area.
- Excavation of the final cover or any waste materials.

Please keep in mind that even though some development activities may not fall under one of the three criteria listed above, they could violate the statutory prohibition. For example, building a structure next to a landfill that is producing methane could expose the structure to a public safety concern.

What are examples of situations when the exemption process would be used?

The exemption is needed when one of the activities described in the previous question is proposed to take place over a historic fill site. This means if municipal solid waste, foreign or non-soil materials are discovered at a site:

- during a Phase I or II site assessment, or
- during excavation or site preparation activities.

New development or expansion of existing development is being considered for the following:

- A site is known to contain fill materials such as demolition waste, foundry sand, fly ash, etc.
- Site is a closed landfill or operated as some type of landfill in the past, possibly unlicensed.
- A site that is known to contain buried waste.
- The property contains buried waste and has a Certificate of Completion (COC) or partial COC from the Voluntary Party Liability Exemption (VPLE) process.

What types of exemptions are available?

The DNR grants conditional exemptions following one of two levels of review: the **expedited exemption** and the **case-by-case evaluation**. These two processes differ in the amount of information that the applicant must submit, the level of technical review by DNR staff, and the time needed to issue the exemption.

Expedited Exemption

Simple, uncomplicated sites will be eligible for an **expedited exemption**. These sites lack the factors that are associated with the potential for higher risk, e.g., regulated hazardous wastes. An expedited exemption may also be granted for a site with more complex fill materials if the proposed development is very simple, e.g., a picnic shelter.

Sites that are eligible for an expedited exemption will be given a minimal review by DNR staff. The responsibility for the potential health and safety risks if the development of the property is not compatible with the waste disposed at the site lies with the individuals who sign and certify the application. Application forms for an expedited exemption are available on the DNR website.

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dated review are completed for Sections I to V and IX.

An applicant can expect to receive an expedited exemption in less than two weeks after submittal of the application.

Exemption Following a Case-by-Case Evaluation

Certain types of wastes require a more detailed evaluation to assess the safety of development and reuse. DNR staff will verify whether sites with these characteristics are eligible for expedited exemption or a case-by-case evaluation:

- former landfills with > 50,000 yd³ of municipal solid waste,
- sites containing wastes that have unique concerns such as:
 - (1) regulated hazardous waste,
 - (2) polychlorinated biphenyls (PCBs),
 - (3) dioxins or furans, or
 - (4) manufactured gas plant wastes.

In many, but not all cases, a **case-by-case evaluation** will be needed. These reviews take longer than the expedited process and are dependent on the existing workload of individual staff. Applicants can expect that the review process will take place within 90 days.

How do I get an exemption?

There are six steps that an applicant must take to apply for an exemption. The sequence and decision options are shown in the diagram in this Fact Sheet. **Refer to the diagram for each step and decision options.**

The first decision is to determine whether a site contains waste or fill materials and an

activity prohibited under NR 506.085 is proposed for that site.

Step 1 is to gather information about the site using *Fact Sheet B – Guidance for Investigation of Historic Fill Sites and Licensed Landfills for Redevelopment*. At a minimum, a characterization of the waste must be done. Depending on the findings, site characterization and assessment may be needed. The intent of the investigation is to gather sufficient information so that the owner/developer and environmental professional can determine the effects of the waste on the proposed development as well as the potential impacts that the development will have on the waste.

Steps 2 A, B, and C are three screening criteria that direct the site to the proper program within DNR, either the Waste or Remediation and Redevelopment program. Applicants will find it helpful to discuss the circumstances at specific sites with the staff who will conduct the review in order to reduce delays caused by incomplete applications.

Step 2A directs that the application at a site that has been licensed as a landfill will be reviewed by staff in the Waste program.

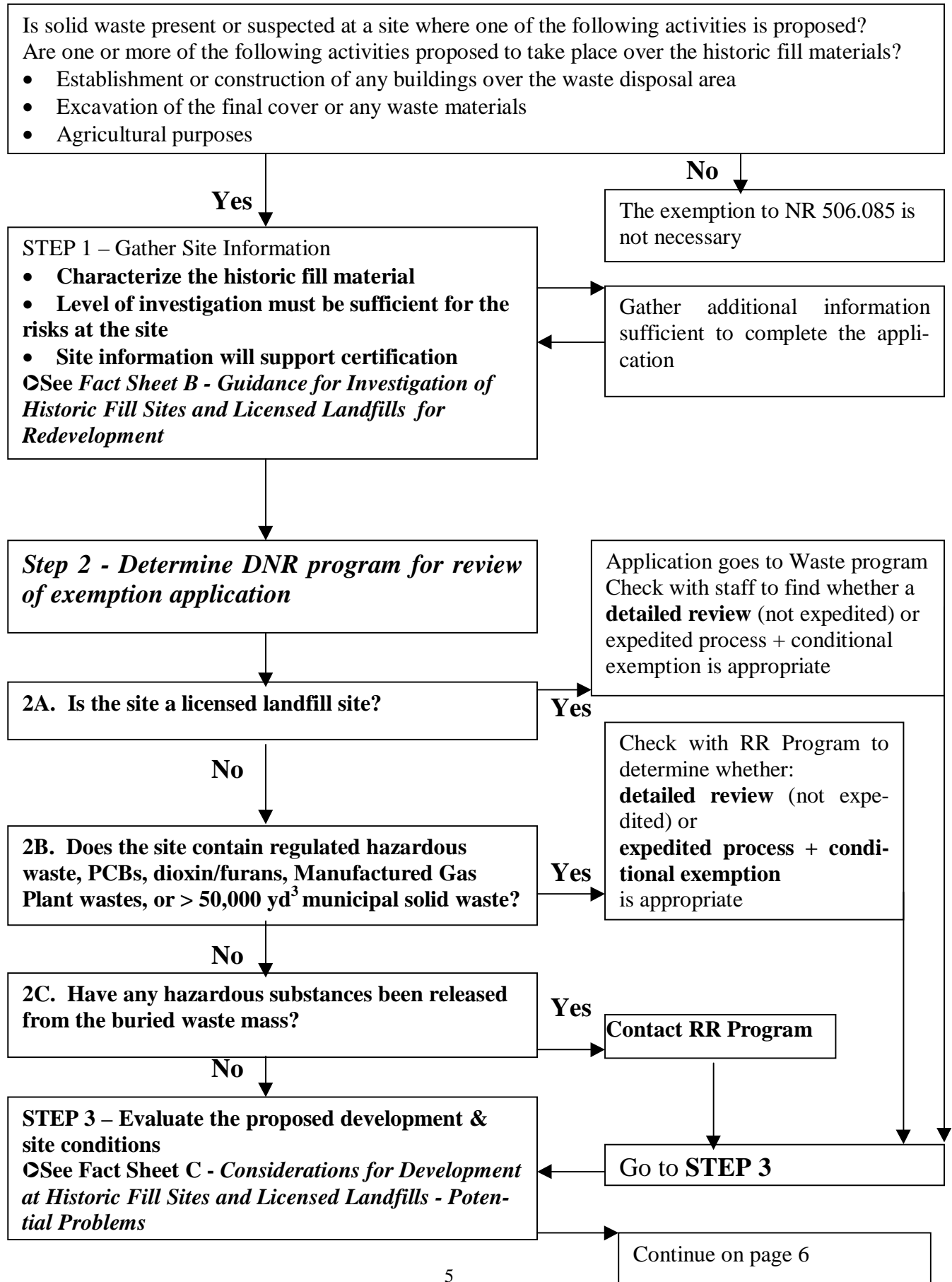
Step 2B identifies those sites with special wastes that present a greater risk such as: regulated hazardous waste, polychlorinated biphenyls (PCBs), dioxins or furans, or manufactured gas plant waste. These sites will be reviewed by staff in the Remediation and Redevelopment program.

The applicant should contact the RR staff and discuss what level of review is appropriate for the site. Depending on the nature of the site and the waste materials, an expedited review may still be possible.

Step 2C identifies those sites where a hazardous substance has been released to the

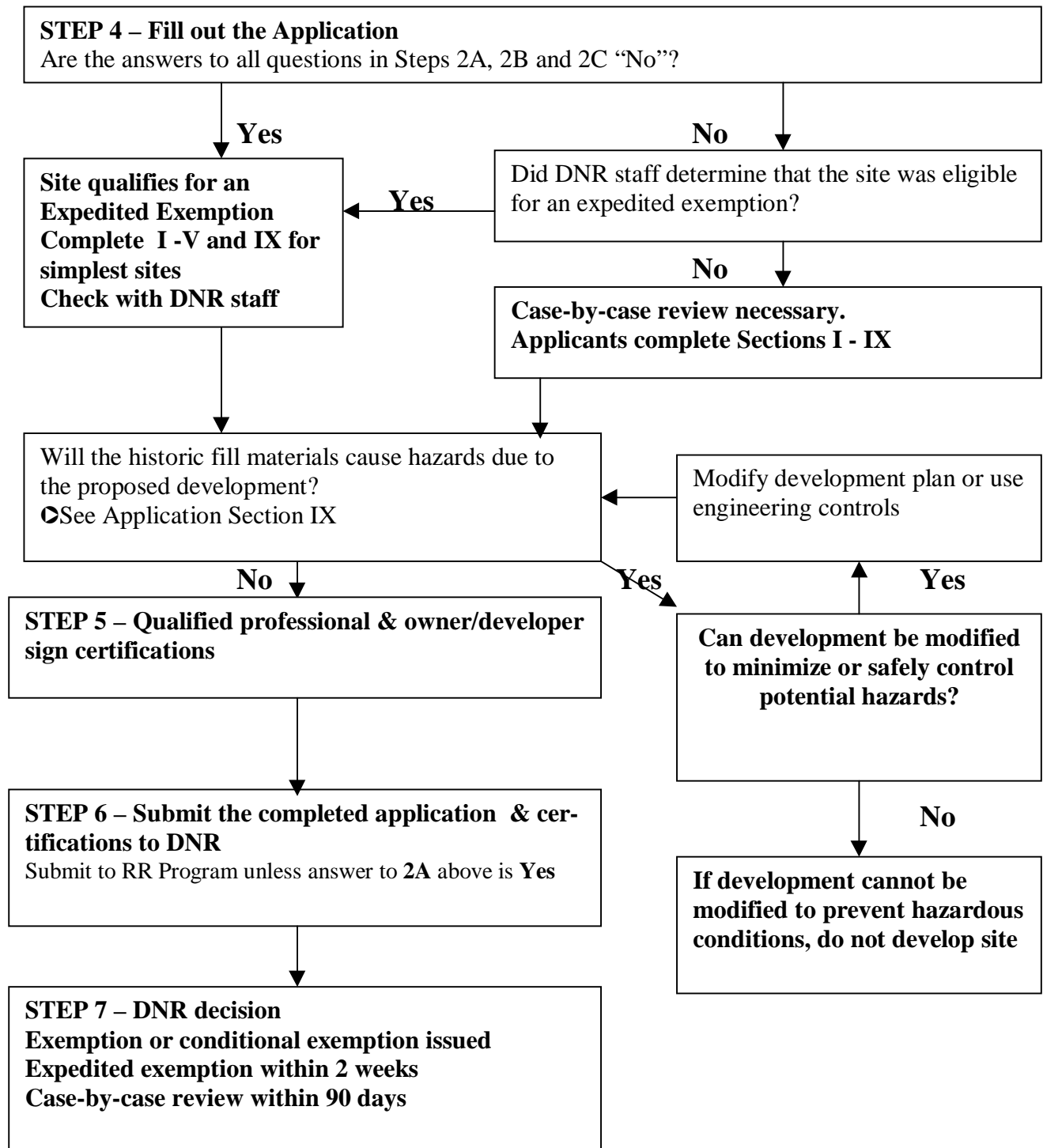
Exemption Process for Development at Historic Fill Sites

A historic fill site is a landfill that was established before 1970 and was not licensed by the DNR



Exemption Process for Development at Historic Fill Sites* (cont'd)

A *historic fill site is a landfill that was established before 1970 and was not licensed by the DNR



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environment and must be reported to DNR in accordance with the state's spill law as described in s. 292.11, Wis. stats. RR staff will work with the applicant to determine the appropriate response to the release under the authority of the NR 700 series. Once the issue of the release has been settled, the site is processed in the usual fashion and is eligible for an expedited exemption if no other factors trigger the case-by-case evaluation.

In Step 3, the applicant and environmental professional evaluate the proposed development and the site conditions and explain how each of the considerations that are identified in *Fact Sheet C* are proposed to be handled at the site. This information should be included in Section IX of the application.

This information must be completed for both the expedited exemption and case-by-case evaluation.

Is there a fee for either the expedited exemption or the case-by-case evaluation?

Yes. Under the provisions of NR 749, the Remediation and Redevelopment program reviews applications with a current fee of \$500 for other technical assistance.

Which DNR program do I call if I have questions about a specific site or property?

The exemption process is jointly implemented by DNR's Bureau for Remediation and Redevelopment (RR) and the Waste Management (WA) Program. Step 2 on the flow diagram describes the screening ques-

tions that are useful for determining which program staff take the lead in the review process. For complex sites, staff from both programs work together.

Remediation and Redevelopment Lead

Sites that were never licensed as landfills will be reviewed by the staff in the Remediation and Redevelopment program. The RR program is also involved in the remediation activities that may be needed at licensed landfills.

Waste Program Lead

In general, if a site has ever been licensed as a landfill, the exemption request is reviewed by staff in the Waste Program. These sites may include:

- town or village landfills that contain less than 50,000 yd³ of waste
- sites where open burning took place
- privately owned landfills developed before 1978
- industrial landfills developed before 1978.

If the volume of waste mass is >50,000 yd³ or the landfill was licensed in 1978, an exemption application will need a thorough, case-by-case review. This type of exemption application **cannot** be expedited and must have **a case-by-case evaluation**.

Who do I contact for more information?

Contact the RR staff member in your area unless your site is or has been a licensed landfill, in which case, the contact is in the Waste program.

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Northeast Region:
RR Contact:
WA Contact:

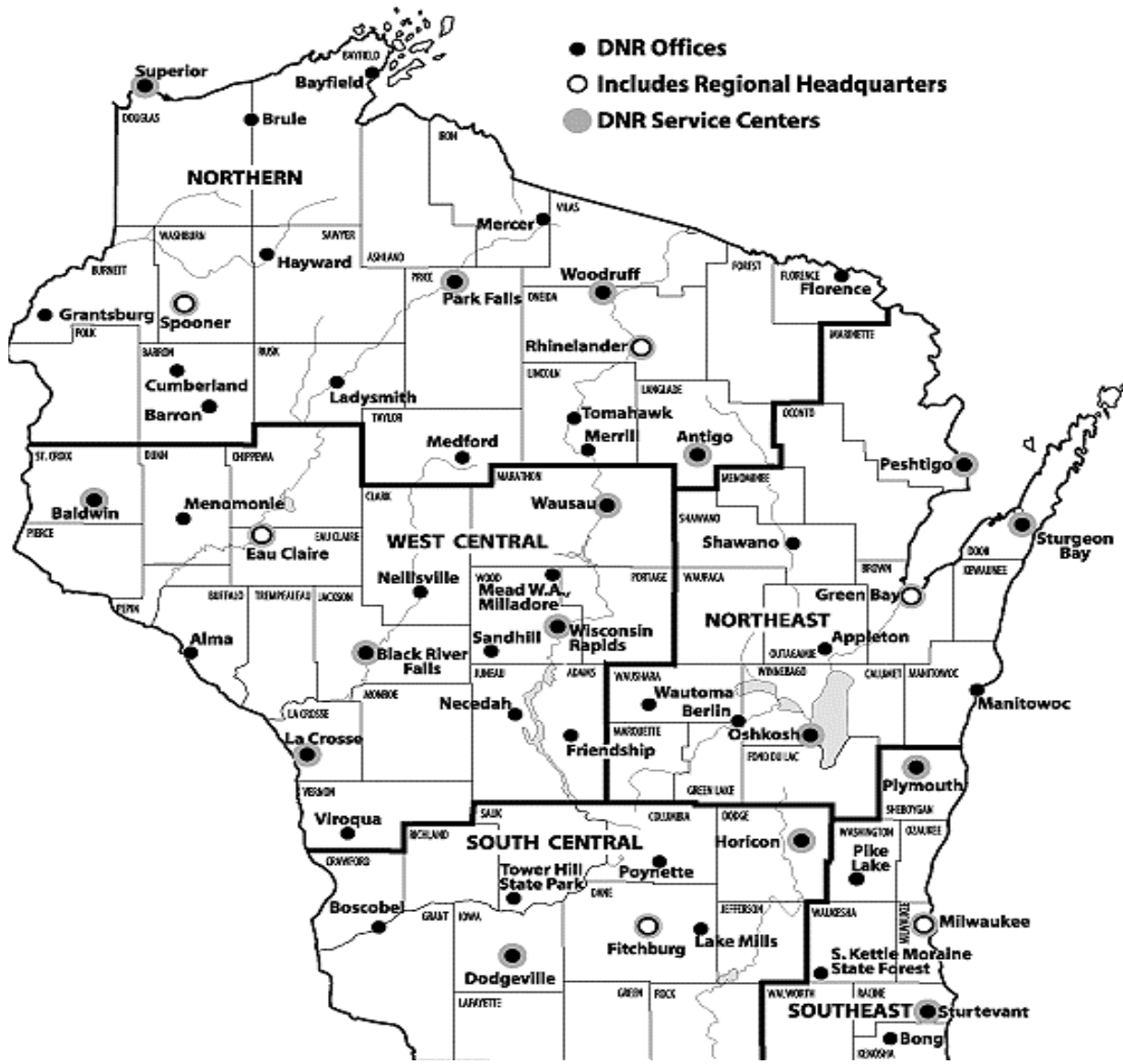
South Central Region:
RR Contact
WA Contact:

West Central Region:
RR Contact
WA Contact:

Northern Region:
RR Contact:
WA Contact:

Southeast Region:
RR Contact:
WA Contact:

Central Office:
RR Contact:
WA Contact:



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